

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 620, “OWI and Implied Consent,” Iowa Administrative Code.

Iowa Code section 321J.4(2) was amended by 2009 Iowa Acts, Senate File 419, section 13, to reduce the minimum period of ineligibility from one year to 45 days for a temporary restricted license (TRL) for a person convicted of operating while intoxicated (OWI) who has had a previous conviction or revocation under Iowa Code chapter 321J. The legislation became effective July 1, 2009.

This amendment was undertaken in response to an amendment to 23 U.S.C. § 164, “Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence,” effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), which previously required states to impose a one-year hard revocation of driving privileges on a repeat offender but which now allows states to impose either a one-year hard revocation or a 45-day hard revocation followed by a period of restricted driving to and from work, school, or an alcohol treatment program. (A “hard” revocation means no restricted driving is allowed during the period of revocation.) Because the amendment to Iowa Code section 321J.4(2) appears clearly calculated to remain within the requirements of 23 U.S.C. § 164, and because said intent demands an interpretation of the proper scope during the first year of revocation of a TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) that is not addressed in current rule, a new subrule is needed to address the proper scope of such a TRL. Further, the National Highway Traffic Safety Administration (NHTSA), which enforces compliance with the requirements of 23 U.S.C. § 164, has reviewed the amendment to Iowa Code section 321J.4(2) and communicated to the Department that it renders Iowa out of compliance with the requirements of 23 U.S.C. § 164, absent a corresponding administrative rule that makes clear that the Department is interpreting and enforcing Iowa Code section 321J.4(2) in compliance with the requirements of 23 U.S.C. § 164. The new subrule will clarify Iowa’s compliance with these federal requirements and prevent reallocation of necessary federal highway funds.

A new subrule is proposed for addition to rule 761—620.3(321J) to provide that, any other provision of 761—Chapter 620 of the Department’s rules notwithstanding, any TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person’s present employment and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person’s present employment, and may include permission for the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person’s employment. The new subrule also provides that all pleadings and orders submitted by the Department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of the new subrule, and the Department shall enforce any order authorizing the Department to issue a TRL to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of the new subrule. The new subrule would apply to revocations arising from convictions entered on or after July 1, 2009.

The Department shall not grant any waivers under the provisions of this new subrule because any waiver would nullify the purpose of this rule making and result in a diversion of highway construction funds.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than September 1, 2009.

A meeting to hear requested oral presentations is scheduled for Friday, September 4, 2009, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8024B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13.